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13 **UNITED STATES DISTRICT COURT**
14 **DISTRICT OF NEVADA**

15 GREAT-WEST LIFE & ANNUITY
INSURANCE COMPANY, and
16 MEDIVERSAL, INC.,

17 Plaintiffs-Counter-
18 Defendants,

19 v.

20 AMERICAN ECONOMY INSURANCE
COMPANY and COLORADO CASUALTY
21 INSURANCE COMPANY,

22 Defendants- Counter-
23 Plaintiffs.

CASE NO. 2:11-cv-02082.-APG-CWH

**DEFENDANTS' UNOPPOSED
AMENDED MOTION FOR LEAVE TO
FILE UNDER SEAL CERTAIN
DOCUMENTS RELATING TO THEIR
MARCH 6, 2014 MOTION FOR
PARTIAL SUMMARY JUDGMENT**

24 **MOTION**

25 In response to the Court's March 10, 2014 Order (Dkt. 199), Defendants/Counter-
26 Plaintiffs American Economy Insurance Company and Colorado Casualty Insurance Company
27 (collectively "American Economy") file this unopposed Amended Motion For Leave To File
28 Under Seal Certain Documents Relating To Their March 6, 2014 Motion For Partial Summary

1 Judgment (“Partial Summary Judgment Motion”). Defendants move under L.R. 10-5(b),
2 *Kamakana v. City and County of Honolulu*, 447 F.3d 1172 (9th Cir. 2006), and this Court’s
3 October 24, 2012 Stipulation and Protective Order in this case, Dkt. 38, at 9 (Para.7.3), for
4 leave to file under seal only the following documents relating to their March 6, 2014 Partial
5 Summary Judgment Motion:

6 a. Exhibit 5 to that Motion (a December 22, 2011 memo prepared by the
7 Holland & Hart firm).

8 b. Page 22 lines 7-15 of Defendants’ March 6, 2014 Motion (which will be
9 filed under seal as a new Exhibit 6, attached hereto).

10 These two documents should be filed under seal because they contain privileged
11 attorney-client communications that both Plaintiffs and Defendants were entitled to see
12 without a waiver of the privilege. Therefore, to protect against the potential harm and/or
13 prejudice that may result, Defendants request this Court grant them leave to file under seal
14 Exhibit 5 and the new Exhibit 6 to their Motion for Partial Summary Judgment.

15 To narrow the scope of Exhibit 3 in light of the *Kamakana* standard, AEI is providing a
16 new version of Exhibit 3 that contains only the pages of Koner Bills’ deposition testimony that
17 it cited in its Partial Summary Judgment Motion.

18 The remaining documents including: the Partial Summary Judgment Motion and
19 Exhibits 1, 2, and 4 can be filed as public documents, rather than under seal.

20 Therefore, American Economy is filing, as exhibits to this motion, the following
21 documents relating to its March 6, 2014 Partial Summary Judgment Motion that the parties
22 agree can be unsealed:

- 23 • Defendants’ Partial Summary Judgment Motion filed March 6, 2014, Dkt. 198 (with the
24 text at page 22 lines 7-15 redacted) (attached hereto as Exhibit A).
- 25 • Exhibit 1 in support of that Motion: Mediversal’s Third Party Administrators
26 Professional Liability Insurance Policies.

- 1 • Exhibit 2 in support of that Motion: Network Access and Utilization Management
2 Agreement between Coast Benefits and Mediversal, Inc. (marked as Bills Deposition
3 Exhibit 136).
- 4 • Exhibit 3 in support of that Motion (as revised): Koner Bills Deposition Transcript
5 excerpts: only pages cited in Defendants' Partial Summary Judgment Motion (March
6 27, 2013).
- 7 • Exhibit 4 in support of that Motion: David Aspinwall Deposition Excerpts.

8
9 Conference with Plaintiffs' counsel

10 American Economy's counsel conferred with Plaintiffs' counsel by sending a letter to
11 them on March 13, 2014 setting forth the details of this proposal and then speaking with them
12 about this proposal on March 17, 2014. Based on those discussions, American Economy is
13 authorized to state that Plaintiffs' counsel agree to American Economy's request set forth in
14 this amended motion.

15
16 MEMORANDUM IN SUPPORT

17 In support of this Amended Motion, American Economy states as follows:

18 1 Defendants filed a Motion for Partial Summary Judgment on March 6, 2014
19 (Dkt. 198).

20 2. Plaintiffs (collectively "Great-West") have designated large portions of the
21 discovery record in this case as Confidential under the Protective Order this Court entered
22 (Dkt. 38). Therefore, in deference to Great-West's designations of certain documents and
23 deposition testimony as Confidential, American Economy moved for leave to file under seal
24 (Dkt. 197) its Partial Summary Judgment Motion and the supporting exhibits.

25 3. The parties have conferred further in light of the Court's March 10, 2014 Order
26 denying that motion for leave to file under seal (Dkt. 199). The parties have agreed jointly to
27 request in this amended motion that the Court allow to be filed under seal only the following
28 two documents relating to American Economy's Partial Summary Judgment Motion:

1 a. Exhibit 5 to that Motion (a privileged December 22, 2011 memo
2 prepared by the Holland & Hart firm).

3 b. Page 22 lines 7-15 of Defendants' March 6, 2014 Motion (which will be
4 filed as a new Exhibit 6).

5 4. These two documents should be filed under seal because they contain
6 privileged attorney-client communications that both Plaintiffs and Defendants were entitled to
7 see without effecting a waiver of the privilege. Therefore, to protect against the potential harm
8 and/or prejudice that may result, Defendants request this Court grant them leave to file Exhibit
9 5 and the new Exhibit 6 to their Motion for Partial Summary Judgment under seal.

10 5. The parties also agreed to narrow the scope of the Defendants' original
11 Exhibit 3 in light of the *Kamakana* standard. American Economy is filing with this motion a
12 new version of Exhibit 3 that contains only the pages of Koner Bills' deposition testimony that
13 it cited in its Partial Summary Judgment Motion.

14 6. The remaining documents including: the Partial Summary Judgment Motion
15 (except for redacted text on page 22) and Exhibits 1, 2, and 4 can be filed as public documents,
16 rather than under seal.

17 7. Under the *Kamakana* standard, there are compelling reasons to file privileged
18 documents under seal such as Exhibit 5 and the new Exhibit 6 to Defendants Partial Summary
19 Judgment Motion. This case involves a dispute between concerning the settlement and final
20 resolution of the underlying lawsuit, *Huynh v. Mediversal* (the "Huynh Lawsuit"). American
21 Economy believes that in order to have this Court decide some aspects of the merits of the
22 current dispute on a motion for summary judgment, the Court needs to be able to review some
23 of the privileged communications concerning the Huynh Lawsuit between the defense counsel
24 for the insured (Mediversal) and American Economy. Mediversal's insurers were authorized
25 to receive such privileged information without that disclosure creating a waiver of the
26 attorney-client privilege or work product doctrine. *See Nevada Yellow Cab Corp. v. Eighth*
27 *Judicial Dist. Court*, 152 P.3d 737, 742 (Nev. 2007). Mediversal has not consented to the
28 waiver of the privilege for these attorney-client communications.

1 8. Under the *Kamakana* standard: “For a document filed with a dispositive
2 motion, ‘compelling reasons’ must be shown to justify sealing the document.” *Colato v.*
3 *LeGrand*, No. 3:10-cv-00470-RCJ-VPC, 2011 WL 2651571 at *1 (D. Nev. July 5, 2011).
4 “To the extent any confidential information can be easily redacted while leaving meaningful
5 information available to the public, the Court must order that redacted versions be filed rather
6 than sealing entire documents.” *Aevoe Corp. v. AE Tech. Co.*, No. 2:12-cv-00053-GMN-NJK,
7 2014 WL 551563 (D. Nev. Feb. 7, 2014); *see also Allstate Insurance Company v. Balle*, No.
8 2:10-cv-02205-APG-NGK (D. Nev. Nov. 19, 2013) (same).

9 9. Compelling reasons exist for filing privileged documents under seal. *See, e.g.,*
10 *National Union Fire Ins. Co. v. Sharp Plumbing, Inc.*, No. 2:09-cv-00783-GMN-GWF
11 (D. Nev. Feb. 13, 2013) (Navarro, J.) (granting unopposed motion to file privileged documents
12 under seal that were filed in connection with a summary judgment motion); *Neumont Univ.,*
13 *LLC v. Little Bizzy, LLC*, No. 2:12-cv-01395-GMN-PAL (D. Nev. June 19, 2013) (Navarro, J.)
14 (granting motion for leave to file privileged attorney billing records under seal as exhibit to
15 motion for default judgment). The attorney-client privilege and work-product doctrine
16 outweigh the public interest noted in *Kamakana* for accessing court records and constitute a
17 compelling need. *See Asdale v. Int'l Game Tech.*, No. 3:04-CV-703-RAM, 2010 WL 2161930
18 at *4, *5 (D. Nev. May 28, 2010) (McQuaid, J.) (court granted motion to seal documents
19 protected by the attorney-client privilege and attorney work product doctrine: “The public
20 interest in accessing the courts does not outweigh the compelling need to protect Defendant's
21 proprietary information and the compelling need to honor the attorney-client privilege and the
22 work-product doctrine”). *See also Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307
23 F.3d 1206, 1212 (9th Cir. 2002) (“courts have consistently granted protective orders that
24 prevent disclosure of many types of information, such as letters protected. under the attorney-
25 client privilege . . .”).

26 10. It is not feasible to redact the confidential information from Exhibit 5 and file it
27 as a public document because the entire document comprises a privileged attorney-client
28

1 communication. The information from Exhibit 5 upon which American Economy relies in its
2 Partial Summary Judgment Motion is part of the confidential information in that document.

3 11. Therefore, based on the analysis above, American Economy requests that the
4 Court not un-seal any of the documents that American Economy filed on March 6, 2014, and
5 instead authorize the following steps:

6 a. The following documents, which are being filed with this amended motion, will
7 now be public documents:

- 8 • Defendants' Partial Summary Judgment Motion filed March 6, 2014, Dkt. 198 (with the
9 text at page 22 lines 7-15 redacted) (attached hereto as Exhibit A).
- 10 • Exhibit 1 in support of that Motion: Mediversal's Third Party Administrators
11 Professional Liability Insurance Policies.
- 12 • Exhibit 2 in support of that Motion: Network Access and Utilization Management
13 Agreement between Coast Benefits and Mediversal, Inc. (marked as Bills Deposition
14 Exhibit 136).
- 15 • Exhibit 3 in support of that Motion (as revised): Koner Bills Deposition Transcript
16 excerpts: only pages cited in Defendants' Partial Summary Judgment Motion (March
17 27, 2013).
- 18 • Exhibit 4 in support of that Motion: David Aspinwall Deposition Excerpts.

19 b. The Court will allow the following documents relating to Defendants' Partial
20 Summary Judgment Motion to remain under seal or be filed under seal:

- 21 • Exhibit 5 in support of that Motion: Pre-mediation Memorandum from Holland & Hart
22 (Dec. 22, 2011): AEIC-4244 to -4259 (marked as Aspinwall Deposition Exhibit 84)
23 (already filed under seal on March 6, 2014 as Exhibit 5 to Dkt. 198).
- 24 • Exhibit 6 in support of that Motion: A new exhibit attached hereto and filed under seal,
25 consisting of the unredacted page 22 to Defendants' Partial Summary Judgment Motion.

1 Wherefore, based on the foregoing, American Economy respectfully requests that the
2 Court:

3 a. accept for filing as public documents the following documents attached to this
4 amended motion: Defendants' Partial Summary Judgment Motion filed March 6, 2014, Dkt.
5 198 (with the text at page 22 lines 7-15 redacted) (attached hereto as Exhibit A), and Exhibits
6 1, 2, 3, and 4 in support of that Motion (attached hereto).

7 b. grant leave to be filed under seal Exhibit 5 in support of that Partial Summary
8 Judgment Motion (already filed under seal on March 6, 2014 as Exhibit 5 to Dkt. 198), and a
9 new Exhibit 6 (attached hereto), which is the unredacted version of page 22 of American
10 Economy's Partial Summary Judgment Motion.

11
12 DATED: March 17, 2014.

Respectfully submitted,

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27 American Economy Insurance Company and
28 Colorado Casualty Insurance Company

ORDER

IT IS SO ORDERED.

Dated: March 18, 2014.



UNITED STATES DISTRICT JUDGE

ORDER

IT IS SO ORDERED.

ANDREW P. GORDON
UNITED STATES DISTRICT JUDGE

Dated: March __, 2014

Respectfully Submitted By,

KOELLER NEBEKER CARLSON
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By: /s/ Ian P. Gillan

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